

APPROVED: Meeting No. 1-91

ATTEST: *Sharon A. Gran*

MAYOR AND COUNCIL
ROCKVILLE, MARYLAND
Meeting No. 46-90

December 10, 1990

The Mayor and Council of Rockville, Maryland, convened in General Session in the Council Chamber, Rockville City Hall, Maryland Avenue at Vinson Street, Rockville, Maryland, on December 10, 1990, at 7:30 p.m.

PRESENT

Mayor Douglas M. Duncan

Councilmember James F. Coyle

Councilmember Viola D. Hovsepian

Councilmember James T. Marrinan

Councilmember David Robbins

In attendance: City Manager Bruce Romer, City Clerk Sharon Gran and City Attorney Paul Glasgow.

Re: City Manager's Report

1. The City's 1991 pocket calendars are available for distribution to the City's Boards and Commissions, presidents of the local civic associations and interested citizens. The calendars list all Mayor and Council meeting dates, Boards and Commissions meeting dates as well as special events for the City of Rockville.

2. The Ritchie Parkway project continues to move along. Significant work has been accomplished this past week, especially in the approach to the bridge over I-270.

3. There was an accident on Baltimore Road today caused by a tree falling on power lines. Although power was out in the area of the Civic Center mansion, through the use of emergency generators, power was maintained at the mansion for the functions scheduled.

4. With respect to possible cutbacks in state funding, a major concern is the

potential cutback in capital funding which may affect the Route 28/W. Montgomery Avenue project. The information available to the City today is that the State's current plan is still to advertise for bids in early January. State officials recommend that the City proceed with the project as planned. Staff will continue to monitor the situation and provide periodic reports.

5. The first report of the City's Affirmative Action Plan is now available and will be sent to all those expressing an interest in the Affirmative Action Plan. Every six months a similar report will be issued.

6. On December 20, at 8:00 p.m., there will be a ceremony at St. Mary's Church commemorating the 50th anniversary of the death of F. Scott Fitzgerald. Fliers are being distributed with detailed information or individuals may call City Hall for more information.

Re: Proclamation declaring the week of December 9 through 15, 1990, as "Drunk and Drugged Driving Awareness Week" in Rockville.

Proclamation No. 33-90

By a unanimous vote of the Mayor and Council, the week of December 9 through 15, 1990, was declared "National Drunk and Drugged Driving Awareness Week" in Rockville. Councilmember Robbins read the Proclamation, the full text of which can be found in Proclamation File No. 5 of the Mayor and Council. Deanne Nelson, President, Montgomery County Chapter of Mothers Against Drunk Driving (MADD), accepted the Proclamation.

Re: Presentation of Certificates of Recognition

The following students of Richard Montgomery, Rockville and Wootton High Schools were presented with Certificates in recognition of their selection as 1990 Distinguished Scholars by the Maryland Higher Education Commission:

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Richard Montgomery High School**Finalists**

Anthony Cate
Judith Feinberg
David Mays

Progna Choudhury
Eric Harper
Jennifer Williams

Semi-Finalists

Marcia Ethridge
Tina Tuan

Cristiano Guerra

Honorable Mention

Hammad Awan
Staci Feldman
Lisi Helmig
Nicole Yuan

Consuelo Chavez
Steven Goldberg
Toai Nguyen

Rockville High School**Finalists**

Rachel Bragin
Amy Yanoff

Jessica Brodey

Semi-Finalists

Sarah Carnevale
Brian Privor

Bryna Kaplan
Thomas Stabb

Honorable Mention

Karen Chia
Paige Giddings
Douglas Marco
Alisa Weinstein

Hsin Chow
Chin Lee
Shara Staller

Thomas S. Wootton High School**Finalists**

Laura Atkinson
Erin Gainer
Michelle LeRoux
Bess Mah
Yesha Patel
Benjamin Sun
Michael Wolfson
Elizabeth Jamison

Laurie Cosenza
Pei-Wen Lee
Nina Lin
Andrea Menotti
Kavitha Sithanandam
Albert Wang
Mehrnoosh Hormozdi
Jumana Kurawadwala

Semi-Finalists

Hong-Yu Chiang
Gail Pinsky

Wendy Lee
Brie Jeweler

Honorable Mention

Suzelle Amyot
Heather Harris

John Garrett
Hena Khan

Re: Citizens' Forum

At this time, the Mayor opened the meeting to hear from any citizen who wished to address the Mayor and Council.

1. Richard Resnick, 953 Farm Haven Drive, addressed several issues.

o Regarding the immediately preceding presentation of certificates, he reminded the Mayor and Council that there is another high school serving residents of Rockville, Walter Johnson, whose students should also be included in recognition ceremonies.

o He thanked the Mayor and Council for the prompt action in changing street lights in the North Farm neighborhood.

o Regarding Item #9 on the agenda, Discussions and Instructions to Staff regarding adoption of Chapter 10B, Common Ownership Communities, of the Montgomery County Code, he advised the Mayor and Council that if the North Farm community was subject to such a law, it did not have the monetary resources required for the fees.

o Finally, he thanked the Mayor and Council for his appointment to the Traffic and Transportation Commission on the agenda later that evening.

2. John Moser, 208 Upton Street, commented on several issues:

o The Chairpersons of the Historic District Commission, Cultural Arts Commission and Recreation and Park Advisory Board have met regarding historic designation of the Civic Center mansion and Mayor Duncan noted that staff would be putting together a memorandum outlining the agreement reached among the chairs.

o Mr. Moser commended City staff members Burt Hall, Betty Wisda, Greg Bayor and Kathleen Moran for their assistance during his term as Chairperson of the Cultural Arts Commission, and the Mayor expressed appreciation for the accomplishments of the Cultural Arts Commission under Mr. Moser's leadership.

o With respect to the Pinneberg sculpture, Mr. Moser indicated that he was available to answer any questions the Mayor and Council may have. Mayor Duncan expressed

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concern with the height of the sculpture, noting that the physical site of Welsh Park is smaller than the individuals from Pinneberg had envisioned from the videotape. Mr. Moser emphasized that this piece is site-specific and the artistic integrity may be compromised with any change in height. There is a three-foot depression where the sculpture would be situated so that it would only stand 11.5 feet above ground level. Mayor Duncan noted that he doesn't have enough information to make a decision and reiterated his concerns regarding the size, location and cost. Councilmember Coyle asked if it is possible to get an artist's rendition or schematic.

In response to Mayor Duncan, Mr. Moser detailed the notification process and distribution of 600 fliers in the community. Councilmember Hovsepien commented that she is impressed by the efforts of the Commission to get community input. There were two presentations to the Mayor and Council and an additional presentation when Dr. Nolte was visiting from Pinneberg. She goes along with the recommendation of the experts and community people involved, commenting that the Pinneberg individuals are waiting to hear of a decision by the Mayor and Council.

It was agreed that a decision would be postponed until an artist's rendering were made available to the Mayor and Council.

3. William Meyer, 804 Leverton Road, commented on the sculpture recommended for Welsh Park and questioned its metaphysical meaning and the intent of the artist, particularly with respect to the concept of the one black and four blue panels.

4. Kenneth Lechter, 8 Eaglebrook Court, read the artist's explanation of the sculpture in question to respond to Mr. Meyer's questions.

5. Jean Collin, 4 Dairyfield Court, inquired as to whether the City had made a decision to appeal the Animal Control Board's order in the Rottweiler matter. Mayor Duncan responded that the October 15 order stood and that the Mayor and Council would discuss a possible appeal in executive session later that evening. The deadline for

filing an appeal is December 15.

Re: Appointments

Upon motion of Councilmember Hovsepian, duly seconded and unanimously passed, Patrick Woodward was appointed to a three-year term as a Member of the Board of Appeals and James Moone was appointed to a one-year term as Alternate.

Upon motion of Councilmember Coyle, duly seconded and unanimously passed, Kenneth Lechter was appointed to a one-year term as Chairperson of the Cultural Arts Commission.

Upon motion of Councilmember Coyle, duly seconded and unanimously passed, Irving Shapiro was reappointed to a four-year term on the Personnel Appeals Board.

Upon motion of Councilmember Coyle, duly seconded and unanimously passed, David Melnick was reappointed to a five-year term on the Planning Commission.

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, Louis Fuerst and Richard Resnick were appointed to two-year terms on the Traffic and Transportation Commission.

Re: Approval of Minutes

Upon motion of Councilmember Hovsepian, duly seconded, with Mayor Duncan abstaining, the minutes of Meeting No. 45-90 (November 26, 1990) were approved, as written.

Re: Consent Agenda

Councilmember Marrinan requested that Item 8C be removed from the Consent Agenda and Councilmember Coyle requested that Item 8D be removed. Upon motion of Councilmember Robbins, duly seconded and unanimously passed, the following Consent Agenda Items were approved:

- A. Approval of waiver for on-site Storm Water Management for the property at Taft Street and East Gude Drive in the Rock Creek drainage area, and

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acceptance of a \$2,400 contribution for the off-site SWM fund.

The developer, MCG Associates, plans the construction of additional parking spaces.

- B. Award of Council of Governments Annual Cooperative low bid for Rockville for 1,500 tons of road salt to Morton Salt Company in the amount of \$44,355. The budgeted amount is \$45,000.

Each year, the City buys its road salt through the Council of Governments cooperative bidding process.

- E. Award of Bid No. 52-91 to the low bidder, C & F Construction Co. in the amount of \$1,022,041, for the reconstruction of W. Montgomery Avenue between 200 feet west of Washington Street and Falls Road and the installation of ductbanks between 200 feet west of Washington Street to Adclare Road.

- F. Introduction of Ordinance to adopt Text Amendment Application T-110-90, Rockville Planning Commission, Applicant.

Amendment to Subdivision Regulations to clarify standards for resubdivision of lots in an established area.

- G. Introduction of Ordinance to Adopt Text Amendment Application T-112-90, New Covenant Fellowship Church, Applicant.

Amendment to Zoning Ordinance to allow churches, synagogues and other places of worship as permitted uses in the I-3, Industrial Park, Zone.

- H. Introduction of Ordinance to

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Adopt Text Amendment Application
T-113-90, Rockville Planning
Commission, Applicant.

Amendment to Zoning Ordinance
definition of "gross floor area
of building" to clarify this
term.

Re: Award of Bid No. 32-91,
Fiscal Impact Analysis,
to Tischler & Associates
in the amount of \$42,000.

Councilmember Marrinan had requested that this item (C) be removed from the Consent Agenda in order to inquire as to the time frame for the report and to emphasize the importance of this item for the audience. The City Manager responded that the contract provides that all work will be completed within 90 days of inception. It is anticipated that the contract will commence as of January 1, 1991, and be completed by the end of March. The work to be done is very timely in that it will be coordinated with the updated master plan and will serve as a resource on a number of long-range planning and financial issues. In response to Councilmember Coyle's question as to whether this would provide the comprehensive outlook the Mayor and Council have been seeking, the City Manager noted that this information would enhance what the City is doing in-house. Councilmember Robbins questioned the expectation of accuracy of such a study beyond the next couple of years. It was mentioned that while the degree of accuracy would be lessened over the years, this study would provide the City with some different scenarios which would be very helpful in making decisions.

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, Bid No. 32-91 for a Fiscal Impact Analysis in the amount of \$42,000 was awarded to Tischler & Associates. This contract funds the study of the projected fiscal condition of the City over the 20-year period 1990-2010, on an annualized basis. The analysis is

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designed to provide the fiscal component of the Master Plan to evaluate the City's current and future fiscal situation and to provide economic information for the City's Economic Development Plan.

Re: Authorization for City Manager to execute formal funding agreement with Maryland State Highway Administration outlining mutual responsibilities for funding and constructing Montgomery Avenue between Falls Road and I-270.

Councilmember Coyle had asked to have this item (D) removed from the Consent Agenda to inquire as to whether this project is considered ongoing as opposed to a future project in view of the fact that the City has already expended a substantial amount of money in improvements. The City Manager responded that the City has acquired 91 additional parcels of land for the right-of-way. It was also noted that this project primarily involves maintenance work rather than new construction and that the project is well underway.

Upon motion of Councilmember Coyle, duly seconded and unanimously passed, the City Manager was authorized to execute a formal agreement with the State Highway Administration outlining mutual responsibilities for funding and constructing Montgomery Avenue between Falls Road and I-270.

Re: Discussion and Instructions to Staff - Amendment to Chapter 1 of the Rockville City Code so as to permit Chapter 10B of the Montgomery County Code entitled "Common Ownership Communities" which takes effect January 1, 1991, to apply within the City of Rockville.

After listening to the testimony of communities, Councilmember Hovsepien suggested that the Mayor and Council follow a "wait and see" approach as to how the

County law is working. Mayor Duncan commented that enough concern had been expressed about assessments that would warrant delay. He requested that staff provide the Mayor and Council with an analysis as to the feasibility of implementing a voluntary dispute resolution process in the City as an interim measure until such time as the City adopts the County's law. Councilmember Coyle commented that it would be helpful to do a survey to determine what the experience of the associations has been with respect to disputes and the level of activity that might be required. Councilmember Robbins supported deferring action to determine the experience of the County's law. Councilmember Marrinan also supported a delay. He noted that the voluntary dispute resolution activity is an important function for homeowners associations but should be County-funded as originally recommended by the County Task Force. The County should be requested to reconsider their position on the funding of this activity.

It was agreed that further discussion regarding this matter would take place when the Mayor and Council receive the staff analysis which would be an agenda item at a meeting in January.

Councilmember Coyle questioned the City's role insofar as architectural control and licenses and inspection done by homeowners associations are concerned. Regarding private residential facilities, the City Manager commented that an effort has been undertaken to find out what issues are pressing with respect to private operations the City might have to deal with in the future; there has not been a great deal of response/reaction thus far.

Re: Adoption of Ordinance to amend Chapter 3, "Animals" of the Rockville City Code so as to establish the responsibility of the owner of an animal placed in the care, custody and/or control of the City for all costs of boarding and maintenance and veterinary procedures relating to said

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animal; to provide for the collection of said costs; to clarify the definition of the term "owner" and to provide that upon the failure of the owner to make timely payment of said costs, the animals shall be deemed abandoned and forfeited to the City for appropriate disposal.

Ordinance No. 36-90

Councilmember Robbins moved the adoption of the Ordinance which was duly seconded. Councilmember Hovsepien moved to amend the Ordinance to remove section 3-65(e) which deals with retroactive collection of assessed costs. The motion being seconded by Councilmember Marrinan, with a vote of one aye (Councilmember Hovsepien), three nays (Mayor Duncan, Councilmembers Coyle and Robbins) and one abstention (Councilmember Marrinan), the motion was lost. As to the retroactive issue, Mayor Duncan noted that this merely provides a mechanism to collect a bill ordered or assessed by a court or administrative body, and Councilmember Coyle commented that it should not be viewed as a penalty but collection of an appropriate fee already incurred. The City Attorney provided clarification that this section is not exacting any new requirement and does not result in the creation of a new debt. Councilmember Marrinan was advised that the City cannot retroactively assess impoundment fees. Councilmember Hovsepien expressed concern with passing an ordinance just for a specific case; Councilmember Robbins noted that the ordinance rectifies an omission in the current law. Mayor Duncan commented that if a judge or board ordered impoundment in the future, the mechanism would be in place to collect the fees.

Upon motion of Councilmember Robbins, duly seconded, with Councilmember Hovsepien abstaining, Ordinance No. 36-90, the full text of which can be found in Ordinance Book No. 16 of the Mayor and Council, was adopted to amend Chapter 3, "Animals"

of the Rockville City Code.

Re: Adoption of Resolution to establish licensing fees for dogs; to establish administrative and municipal infraction fines for violations of Chapter 3, "Animals" of the Rockville City Code; and to establish impoundment fees.

Resolution No. 29-90

In response to Councilmember Hovsepian's inquiry regarding existing fees, the City Attorney advised that licensing fees are currently in place and that municipal infraction fees are being added. He further indicated that impoundment fees had formerly been in existence when the City had a pound. In response to Councilmember Robbins as to the varying fee amounts charged by kennels, the City Attorney indicated that the City would pass on to the owner whatever costs are charged by the kennels.

Upon motion of Councilmember Coyle, duly seconded and unanimously passed, Resolution No. 29-90, the full text of which can be found in Resolution Book No. 9 of the Mayor and Council, was adopted to establish licensing fees for dogs; to establish administrative and municipal infraction fines for violations of Chapter 3, "Animals" of the Rockville City Code; and to establish impoundment fees.

Re: Worksession - Revisions to the Animal Control Ordinance.

Chief Treschuk commented that the revised ordinance was the result of review of the most effective animal ordinances from around the country, including California and New York. Mayor Duncan indicated that the Mayor and Council would proceed page by page through the ordinance in order to ask questions of staff.

Page 4 - It was agreed that "potentially dangerous dog/cat" would be changed to "potentially dangerous animal" and all references to dog/cat throughout the ordinance would be substituted with the word "animal." Subsection (a) was to be amended to delete

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references to "two separate occasions" and "within the prior 36-month period."

Subsection (b) was amended to change "bite" to "any direct or indirect injury."

Subsection (c) was amended to substitute "animal" for "dog/cat," and to delete the reference to two separate occasions within the 36-month prior period.

Page 5 - Add to the definition of "severe injury," broken bones or causes injury requiring in-patient hospital stay. It was also agreed that there should be a provision for "psychological injury."

Page 6 - Replace "Vicious dog/cat" definition with "Dangerous animal." In subsection (a), delete "in an aggressive manner;" in subsection (b), replace the language "continue the behavior described in the definition of potentially dangerous animal" with "violates any provision of the ordinance."

With respect to Division III, Animal Control Board, beginning on page 12, Mayor Duncan expressed concern that the current law and the proposed law do not focus enough on public safety. He proposed that matters dealing with animal attacks be handled administratively within 10 days of an attack. A municipal infraction citation would normally be issued in such matters, and the Mayor and Council agreed to reserve the right to issue a citation for purposes of assessing an administrative fine.

Chief Treschuk responded to Councilmember Robbins' question regarding the current procedure when a complaint is filed, i.e., a neighborhood services officer assigned to investigate the complaint would first give a verbal warning, then a written warning and, finally, a municipal infraction citation. The individual would have a choice of going to court or paying the fine; however, the neighborhood can petition the Animal Control Board for sanctions. In response to Councilmember Robbins' question as to the number of hearings held by the Animal Control Board, Chief Treschuk that they have met on nine occasions and handled 18-20 cases this year.

Councilmember Hovsepien commented that she would like to retain the Animal

Control Board; that they provide a very good service to the City. She concurred with the proposal for an administrative entity to handle immediately any bite or attack with the Animal Control Board retaining the responsibility for all other matters.

Councilmember Marrinan commented that the Animal Control Board provides an arbitration and counseling service for dog owners; that this particular function is valuable to the community and he would not like to see it lost.

Mayor Duncan asked that pages 12, 13 and 14 concerning the Animal Control Board remain in the ordinance for the public hearing.

Page 16 - Section 3-64, a fourth condition was added to "Release Requirements" to provide for a release letter from the impounding entity.

Page 17 - Section 3-82, subsection (b) was amended to provide that there should be a hearing no less than five days nor more than ten days from the receipt of a petition. (Exceptions would be made in extenuating circumstances.) Councilmember Hovsepien noted that the Animal Control Board had requested that the hearings be limited to once a month which seemed to be acceptable to the community.

Page 19, regarding "Nuisances," the Assistant City Attorney suggested that specific authority to impose sanctions up to and including removal from the City should be provided where a nuisance continues over time. She also advised that the City should provide some type of forum in which the owner of an animal can respond.

In response to Councilmember Hovsepien's question as to the frequency of repeat offenders, staff advised that most cases that currently go to the Board involve repeat offenders.

Chief Treschuk emphasized enforcement rather than adjudication, indicating that specific administrative sanctions would be the appropriate procedure. Discussion followed regarding repeat offenses of a public nuisance and the threshold at which a public nuisance becomes a more serious violation.

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Mayor Duncan suggested the need to limit the number of dogs at any particular residence, citing the example of 20 pit bulls in Lincoln Park. The Assistant City Attorney responded that a nuisance could exist by virtue of the number of animals and it was agreed that the number would not be closely defined; rather, it would be judgmental on the part of City officials.

Page 29 - Councilmember Hovsepian recommended that, in subsection (e), cats be deleted from having to wear identification tags or collars.

Mayor Duncan stated that some differentiation between public nuisance and severe public nuisance is needed along with certain defined infractions. The definitions on pages 41 through 44 were duplicative and were to be deleted. In Section 3-163, a subsection (c) was to be added to the effect that the City will not issue a license to any animal found to be dangerous or potentially dangerous in any jurisdiction. The Assistant City Attorney noted that there should be a mechanism in place to declare dogs potentially dangerous.

On page 45, Section 3-164, "Judicial Process," a sentence is to be added indicating that if personal service cannot be effected, then service shall be by first class mail.

On page 47, there was discussion regarding "willful trespass." On page 48, paragraph 2 was amended to provide for a secure "enclosure" for a potentially dangerous animal on the owner's property and restrained by a substantial leash "and muzzled" when off the owner's premises.

On page 50, paragraph c., Liability insurance, the language was amended to provide that such insurance is a requirement for the owner of any dangerous or potentially dangerous animal.

On page 51, paragraph e., Mayor Duncan asked that a requirement be added for the tattooing of potentially dangerous dogs. Paragraph f. was to be amended to provide

that any animal which met certain criteria may be put to sleep.

The worksession concluded with a reiteration of the authority changes: situations involving a dangerous or potentially dangerous dog will be handled through an administrative entity (City Manager or his designee(s)) and public or severe public nuisances would be handled by the Animal Control Board.

Re: FYI/Correspondence

Alternative for Wetlands Mitigation

Councilmember Hovsepien requested that this alternative be included as part of the public hearing record for the Ritchie Parkway wetlands mitigation.

Benefit Flag Football Game

In response to Councilmember Marrinan's question as to the time and place for this game on December 16, it was noted that the game will be played at 3:30 p.m. at the Montgomery College Football Field. The proceeds will go to retired City Police Officer Carol Sidel to assist in the payment of medical bills.

Annual Inspection of Rental Properties

Councilmember Hovsepien referenced the letter requesting annual inspection of rental properties in the City. She had recently attended a housing seminar with the Director of Community Development and suggested that it may be helpful if the City could compile a list of the items which are normally the subject of inspection so that individuals would be aware of the types of code violations that could be identified.

National League of Cities 1990 Congress of Cities and Exposition

Councilmember Marrinan reported on the National League of Cities Conference which he and the other Councilmembers had attended the previous week. He commented that other municipalities face many of the same issues confronting Rockville, such as wetlands mitigation. With respect to the new Federal Clean Air Act, he noted the potential impact on the metropolitan Washington area as well as Baltimore City which have been classified

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as having serious problems with air pollution.

Councilmember Coyle noted how many cities are experiencing financial difficulties and that Rockville is fortunate to have sustained its budget and service level. He also commented on health care issues.

Councilmember Robbins referenced the national perspective on communities, particularly in the area of drug and law enforcement.

Councilmember Hovsepien commented regarding the opportunity to meet people in other jurisdictions and how impressed she is with the quality of leadership in Montgomery County and Rockville.

Re: New Business

With respect to the Civic Center Mansion Master Plan, Councilmember Hovsepien noted that the Mayor and Council should move forward with the meeting of all the support groups. Mayor Duncan stated that a meeting would be scheduled at 1:00 p.m. on a Saturday afternoon in January.

Proclamation No. 34-90

By a unanimous vote of the Mayor and Council, December 20, 1990, was proclaimed as a day to commemorate the 50th Anniversary of the death of F. Scott Fitzgerald. Councilmember Robbins read the Proclamation, the full text of which can be found in Proclamation File No. 5 of the Mayor and Council, which will be presented at the commemoration ceremony on December 20.

Petition of Beall Avenue Residents

Beall Avenue residents and the West End Citizens Association have requested the City to proceed with the West End Traffic Management Plan and to form a West End Traffic Management Committee. Mayor Duncan commented that the formation of this Committee would be advertised in Rockville Reports and appointments to the Committee would be made in January. Interested individuals should submit an application.

Councilmember Coyle referenced the intersection of Falls Road and I-270 and the outstanding citizen concerns. The City Manager responded that staff is following up on all issues through numerous contacts with the State.

Re: Executive Session

Upon motion of Councilmember Hovsepian, duly seconded and unanimously passed, the Mayor and Council convened in Executive Session at 11:20 p.m. to discuss personnel matters and consult with legal counsel.

Re: Adjournment

There being no further business to come before the Mayor and Council, the meeting was adjourned at 12:15 a.m., to convene again in Worksession at 5:30 p.m. on December 17, 1990, or at the call of the Mayor.